

Panaji, 26th November, 2009 (Agrahayana 5, 1931)

SERIES II No. 35

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 34 dated 21-11-2009 & 23-11-2009 as follows:-

- 1) *Extraordinary dated 21-11-2009 from pages 889 to 890 regarding Notification from Goa Legislature Secretariat.*
- 2) *Extraordinary (No. 2) dated 23-11-2009 from pages 891 to 892 regarding Notices in Form No. 2 from Department of Elections (Goa State Election Commission) and regarding Notification from Department of General Administration.*

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 1/4/1/2004-05/D.Aagri/246

Read: Order No. 1/4/1/2004-05/D.Aagri/271 dated 7-11-2007.

Government is pleased to extend the deputation period of Shri V. D. Deshmukh, Dy. Director of Agriculture to Goa Tillari Irrigation Development Corporation, Panaji, for a further period of one year (third year) i.e. from 12-11-2009 to 11-11-2010 on the same terms and conditions.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 13th November, 2009.

Order

No. 8/15/2009/D.Aagri/247

Read: 1) Order No. 2/9/95-AGR/Part/670 dated 05-10-2005.

2) Order No. 8/15/2008/D.Aagri/117 dated 24-06-2009.

Government is pleased to grant extension of ad hoc promotion to the following Agricultural

Officers, Group 'B' Gazetted of the Directorate of Agriculture in the Pay Band—II Rs. 9,300-34,800+4,200/- Grade Pay for a period of six months as mentioned against their names or till the post is filled on regular basis whichever is earlier on the same terms and conditions as indicated in the above stated Order.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2/(3)/92-06/Part file/1751 dated 10-11-2009.

Sr. No.	Name of the AO	Date of extension
1.	Shri Anant Hoble	05-10-2009 to 04-04-2010.
2.	Shri Nitin Bakhale	05-10-2009 to 04-04-2010.
3.	Shri Shrikant Mone	05-10-2009 to 04-04-2010.
4.	Shri Girish Kenkre	05-10-2009 to 04-04-2010.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 13th November, 2009.

Order

No. 8/15/2009/D.Aagri/248

Read: 1) Order No. 2/9/95-AGR/Part/90 dated 29-03-2006.

2) Order No. 8/15/2008/D.Aagri/115 dated 24-06-2009.

Government is pleased to grant extension of ad hoc promotion to the following Asstt. Director of Agriculture, Group 'A' Gazetted of the Directorate of Agriculture in the Pay Band—II Rs. 9,300-34,800+5,400/- Grade Pay for a period of six months as mentioned against their names or till the post is filled on regular basis whichever is

earlier on the same terms and conditions as indicated in the above stated Order.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2/(3)/92-06/Part file/1751 dated 10-11-2009.

Sr. No.	Name of the ADA	Date of extension
1.	Shri Larry Barreto	29-09-2009 to 28-03-2010.
2.	Shri Nelson Figueiredo	05-10-2009 to 04-04-2010.
3.	Shri Datta Kossambe	05-10-2009 to 04-04-2010.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 13th November, 2009.

Order

No. 8/15/2009/D.Aagri/249

Read: 1) Order No. 2/9/95-AGR/Part/89 dated 29-03-2006.

2) Order No. 8/15/2008/D.Aagri/116 dated 24-06-2009.

Government is pleased to grant extension of ad hoc promotion to the following Dy. Directors of Agriculture, Group 'A' Gazetted of the Directorate of Agriculture in the Pay Band—III Rs. 15,600-39,100+6,600/- Grade Pay for a period of six months as mentioned against their names or till the post is filled on regular basis whichever is earlier on the same terms and conditions as indicated in the above stated Order.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2/(3)/92-06/Part file/1751 dated 10-11-2009.

Sr. No.	Name of the DDA	Date of extension
1.	Shri Girish Kamat	5-10-2009 to 4-04-2010.
3.	Shri Vinod Deshmukh	5-10-2009 to 4-04-2010.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 13th November, 2009.

Order

No. 8/15/2009-10/D.Aagri/250

Read: 1) Order No. 2/9/95-AGR/90/125 dated 29-05-2006.

2) Order No. 8/15/2009-10/D.Aagri/172 dated 31-07-2009.

Approval of the Government is hereby conveyed for continuation of ad hoc promotion to the following Agricultural Officers, Group 'B' Gazetted of the Directorate of Agriculture in the Pay Band—II Rs. 9,300-34,800+4,200/- Grade Pay for a further period of six months as mentioned below against their names or till the post is filled on regular basis whichever is earlier on the same terms and conditions as indicated in the above stated Order.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2/(3)/92-06/Part file/1751 dated 10-11-2009.

Sr. No.	Name and designation of the Officer	Date of extension
1.	Shri Kishor Bhawe, Agriculture Officer	29-11-2009 to 28-05-2010.
2.	Shri Pradip Malik, Agriculture Officer	29-11-2009 to 28-05-2010.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 13th November, 2009.

Order

No. 8/60/2009-10/D.Aagri/254

Read: 1) Order No. 8/60/2007-08/D.Aagri/261 dated 5-11-2007.

2) Order No. 8/60/2009-10/D.Aagri/118 dated 24-06-2009.

Government is pleased to grant extension of ad hoc promotion to the following Asstt. Director of Agriculture, Group 'A' Gazetted and Agriculture Officer, Group 'B' Gazetted in the Pay Band—III of Rs. 15,600-39,100+5,400/- Grade pay and Rs. 9,300-34,800+4,200/- Grade Pay respectively of the Directorate of Agriculture for a period of six months as mentioned against their names or till the post is filled on regular basis whichever is

earlier on the same terms and conditions as indicated in the above stated Order.

Sr. No.	Name & designation of the Officers	Date of extension
1.	Shri Madhav B. Kelkar, Asstt. Director of Agriculture	05-11-2009 to 04-05-2010.
2.	Shri Nevil Alphonso, Asstt. Director of Agriculture	05-11-2009 to 04-05-2010.
3.	Shri Dattaprasad Dessai, Agriculture Officer	05-11-2009 to 04-05-2010.
4.	Shri Anil A. de Noronha, Agriculture Officer	05-11-2009 to 04-05-2010.
5.	Shri Shivram B. Naik Gaonkar, Agriculture Officer	05-11-2009 to 04-05-2010.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2/(3)/92-06/Part file/1770 dated 13-11-2009.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture & ex officio Joint Secretary.

Tonca-Caranzalem, 17th November, 2009.

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 1-3-71/EST/RCS(Part)/2247

Read: 1. Government Order No. 1-3-71/EST/RCS (Part) dated 8-4-2009.

2. Corrigendum No. 1-3-71/EST/RCS (Part) dated 10-7-09.

The ad hoc promotion of S/Shri U. P. Gaonkar and E. R. Kauthankar, Asstt. Registrar of Coop. Societies made vide Order at Sr. No. 1 and Corrigendum at Sr. No. 2 is hereby extended ex-post-facto sanction for the period from 8-10-2009 to 22-10-2009.

The extension of ad hoc promotion shall not bestow any claim to the promoted officers for regular appointment and services rendered in the

promoted cadre on ad hoc basis shall not count for the purpose of seniority in that cadre for eligibility for promotion to the next higher grade.

This is issued with the approval of the Government of Goa.

By order and in the name of the Governor of Goa.

P. K. Patidar, Registrar of Coop. Societies & ex officio Joint Secretary.

Panaji, 12th November, 2009.

Department of Education, Art & Culture

Directorate of Archives & Archaeology

Notification

No. 8/277/Part File/2009/DAA

The Government of Goa is pleased to set up a State Level Implementation Committee (SLIC) of this State for the National Mission on Monuments & Antiquities (NMMA) in order to get going with implementation of programmes of NMMA.

The composition of the State Level Implementation Committee (SLIC) is as under:

- | | |
|--|-----------------------|
| 1) Chief Secretary | ... Chairman. |
| 2) Comm. & Secretary, Archives & Archaeology | ... Member. |
| 3) Secretary, Panchayat | ... Member. |
| 4) Director of Archives & Archaeology | ... Member. |
| 5) Director, National Mission on Monuments & Antiquities | ... Member. |
| 6) Superintending Archaeologist, Archaeological Survey of India (Goa Circle) | ... Member Secretary. |

Members nominated by the State on the Committee are as under:

- Shri K. D. Sadhale, Architect particularly in temple architecture.
- Shri Percival Noronha, Retired Government servant having knowledge in medieval history & archaeology.
- Prof. K. M. Mathew, Retired Professor, Goa University.
- Shri J. J. S. Rego, Chief Engineer, P. W. D.

Functions:

The SLIC is expected to identify professional institutions and individuals who can undertake projects relating to documentation of built heritage, sites and antiquities. It would also liaise with the Mission at the national level, be responsible for conducting awareness and training programmes for capacity building and periodically review and monitor the Mission's work in the State.

By order and in the name of the Governor of Goa.

M. L. Dicholkar, Director of Archives & Archaeology.

Panaji, 23rd October, 2009.

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Department of Elections

Office of the Chief Electoral Officer

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Notification

No. 8-19-2009/ELEC/3195

The following Notification No. 82/GOA-LA/1/2007 dated 19th October, 2009 issued by the Election Commission of India under sub-section 2(b) of Section 116 (C) of the Representation of the People Act, 1951 (43 of 1951) is hereby published for general information.

Arvind V. Bugde, Assistant Chief Electoral Officer.

Panaji, 3rd November, 2009.

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली — ११०००१

अधिसूचना

तारीख: १९ अक्टूबर, २००९
२७ अश्विन, १९३१ (शक)

संख्या. ८२/गोवा-वि.स./१/२००७ लोक प्रतिनिधित्व अधिनियम, १९५१ (१९५१ का ४३) की धारा ११६ (ग) की उपधारा २ (ख) के अनुसरण में, भारत निर्वाचन आयोग, मुम्बई उच्च न्यायालय, गोवा स्थित बेंच के २००७ की निर्वाचन याचिका संख्या १ में २००७ की निर्वाचन आवेदन सं. ५ के निर्णय दिनांक ४ जुलाई, २००८ के विरुद्ध दाखिल

की गई २००९ की सिविल अपील सं. ५६७९ में भारत के उच्चतम न्यायालय के दिनांक २० अगस्त, २००९ का निर्णय एतद्वारा प्रकाशित करता है।

(निर्णय/आदेश यहां छापें)

आदेश से,

स्टेण्डहोप युहलुंग

सचिव

भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi - 110001

Notification

Dated: 19th October, 2009
27 Asvina, 1931 (Saka)

No. 82/GOA-LA/1/2007—In pursuance of sub-section 2(b) of Section 116 (C) of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgment dated 20th August, 2009 of the Supreme Court of India in Civil Appeal No. 5679 of 2009 against the Judgment and Order of the High Court of Bombay Bench at Goa in Election Application No. 5 of 2007 in Election Petition No. 1 of 2007.

(HERE PRINT THE JUDGMENT/ORDER)

By Order,

STANDHOPE YUHLUNG

Secretary

Election Commission of India.

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 5679 OF 2009

(Arising out of SLP (Civil) No. 18893 of 2008)

Anil Vasudev Salgaonkar ... Appellant

Versus

Naresh Kushali Shigaonkar ... Respondent

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment and order of the High Court of Bombay Bench at Goa passed in Election Application No. 5 of 2007 in Election Petition No. 1 of 2007 on 4th July, 2008.

3. The respondent herein has filed an election petition in the High Court of Bombay at Goa challenging the election of the appellant (respondent No. 1 in the election petition) to Goa Legislative Assembly from 35 Sanvordem Assembly Constituency. In the assembly elections held on 2nd June, 2007, the appellant secured overwhelming mandate from the electorates securing 10705 votes out of total 19657 votes polled whereas, his nearest rival (respondent No. 2 in the election petition) set up by the Bharatiya Janata Party secured only 3782 votes and the respondent (election petitioner) polled only 275 votes and forfeited his deposits. In the election petition before the High Court, a prayer has been made to declare the election of the appellant herein as null and void on ground of corrupt practices in which the appellant indulged during the elections. The allegations in the petition are as under:

- i) The returned candidate with an intent to secure the votes of the voters of his constituency got 13 bore wells constructed at his own cost in the seven villages of the said constituency;
- ii) The returned candidate had also provided ambulances to the villages namely Collem, Sanvordem, Mollem, Dharbandora and Khirpal Dabhal as a part of his action in luring voters to vote in his favour.

4. It has also been alleged that the appellant indulged in the abovementioned corrupt practices and incurred election expenditure in contravention of Section 77 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") thereby crossing the limit of Rs. 5,00,000/- prescribed under the Act and the Rules framed thereunder.

5. The written statement to the election petition was filed by the appellant in the High Court. The allegations mentioned in the election petition were specifically refuted and denied in the written statement. Apart from number of preliminary objections, it was stated by the appellant that the election petition does not comply with the provisions of Chapter II of the Act and is, therefore, required to be dismissed at the threshold.

6. The appellant also stated in the written statement that the election petition does not contain a concise statement of the material facts

on which the respondent relies and, therefore, the petition does not comply with clause (a) of sub-Section (1) of Section 83 of the Act. It was also incorporated in the written statement that the election petition does not set forth the material facts of the alleged corrupt practice. The respondent herein has also failed to disclose the names of the parties alleged to have committed the corrupt practice. In the election petition, the date and place of the commission of such alleged corrupt practice has not been mentioned and, therefore, the election petition deserved to be dismissed as not maintainable.

7. In the written statement it was also stated that the appellant secured 10705 votes whereas the respondent (election petitioner) got only 275 votes. The margin is too huge to state that the candidate has been returned on account of some alleged corrupt practice. The respondent in the election petition is required to show that the candidate has been elected and that the result of the election has been materially affected by any alleged corrupt practice committed as such.

8. The allegations of alleged corrupt practices pleaded by respondent (election petitioner) are limited to digging of 13 bore wells in villages falling under the constituency in question after issuance of the election notification. The basis for this allegation is that the machinery allegedly used to dig bore holes in the ground as mentioned in paragraph 16 of the election petition was the same machinery owned by a third party which was hired in the past to work for the Salgaoncar Mining Industries at Vagus valley. The respondent in paragraph 16 of the election petition has also averred that the owner of the Salgaoncar Mining Industries is the appellant herein and on this sole basis the conclusion is sought to be drawn and averment made to the effect that it is obvious that the cost of the said wells and the other wells were borne by the returned candidate through his business concern, namely, Salgaoncar Mining Industries.

9. The pleadings of the said allegations of corrupt practice are limited to digging of bore wells only and there is no pleading on the material facts whether any water drawing equipment was installed in the said bore holes so dug and that such bore holes became water bore wells and that the water could be drawn from them. Neither any facts have been pleaded nor particulars given to the effect of how and in what manner the voters were influenced in favour of the appellant so as to cast votes in his favour. No particulars of such

voters have been given in the election petition. As such there is total absence of material pleadings so as to prove that due to the alleged corrupt practice the election has been vitiated in a manner that but for such bore holes not being dug the appellant would not have been returned as a winning candidate and either respondent herein or respondent No. 2 of the election petition could have been returned as a winning candidate.

10. There are no averments to the effect whether such bore holes were dug with the consent and/or active knowledge of the appellant. The estimates of cost involved supplied in the election petition are also limited to the cost of drilling the bore holes and not of installing the water drawing plant and machinery in them to draw water from the bore holes. As such, the said pleading is totally general and vague in nature and is entirely incapable of passing the muster of the test as laid in the *Azhar Hussain v. Rajiv Gandhi* 1986 (Supp) SCC 315 or such facts as are pleaded in the petition are capable of being later on amplified in view of the test laid down in *H. D. Revanna v. G. Puttaswamy Gowda & Others* (1999) 2 SCC 217 so as to arrive at a conclusion that a triable case is made out.

11. The second allegation of the alleged corrupt practice is to the effect that the appellant herein has, in the name of his mining company viz. M/s. Salgaoncar Mining Industries Pvt. Ltd. Vagus, Palem, Bicholim, Goa, bought 5 Maruti Ambulances from M/s. Sai Service Station Ltd., Verna, Salcete, Goa by incurring a cost of Rs. 2,50,000/- for each of the ambulances and the cost of the 5 ambulances approximately would be a sum of Rs. 12,50,000/- and once the said elections were declared and he filed his nomination for the said election, caused the said company to put the said ambulances at the disposal of the villagers of the said villages.

12. There are absolutely no averments with regard to which villagers or electors had used such ambulances and for whose benefit such ambulances were deployed so as to constitute 'bribe' to the voters and that to an extent that would have influenced the outcome of the election. It is stated that any company operating mines on large scale with heavy machinery is under a statutory duty to maintain safety at the mines and is, as such, statutorily required to provide required facilities including deployment of ambulances in adequate numbers at various mines to ensure safety of the persons working at these mines. The various mines of Salgaoncar Mining Industries are spread over large areas falling in the constituency.

13. The petition is absolutely devoid of any averment with regard to such ambulances being specifically deployed for the benefit of any elector in the constituency much less a number of electors who would have benefited from such service even if not admitted but proved to be true that could have influenced the election so as to change its outcome.

14. There are absolutely no averments to the effect that these ambulances were deployed at which specific place, at which specific time and for the benefit of whom and whether at the instance or with knowledge of the appellant. As such, the said pleading is incapable of passing the test as laid in the *Azhar Hussain's case (supra)* or such facts as are pleaded in the petition are capable of being later on amplified in view of the test laid down in *H. D. Revanna's case (supra)* so as to arrive at a conclusion that a triable case is made out.

15. The third allegation pertains to the election expenses incurred by the appellant on the basis that amount spent on digging of bore holes as well as the cost of 5 ambulances deployed for discharge of statutory requirements for carrying out mining operations by a company ought to be calculated towards the election expenses incurred by the appellant and, as such, devoid of any merit in view of the insufficiency of pleadings in terms of 'material facts' with respect to the two main allegations of corrupt practices relating to digging of bore wells and 5 ambulances.

16. The High Court has totally misdirected itself by misconstruing the ratio laid down in a catena of decision pronounced by this Court including the law laid down in *Azhar Hussain's case (supra)* and *H. D. Revanna's case (supra)* which if properly applied to the facts and circumstances of the present case would lead to rejection of the election petition in limine.

17. The other important questions of law of general importance involved in the present petition require adjudication by this Court are whether amenities or facilities provided in general and not in particular to a candidate or his agent or by any other person with the consent of the candidate, is a corrupt practice or a bribery or a gratification within the meaning of Section 100(1)(b) read with Section 123(1) of the Act. Whether the absence of the prescribed affidavit in Form 25 as required under Rule 94A of the Conduct of Election Rules, 1961 and in terms of proviso to Section 83 of the Act is fatal to the maintainability of an election petition on the ground of corrupt practices?

18. In the election petition the respondent has mentioned that there was scarcity of water supply in certain villages. However, the respondent has failed to mention the numbers of houses which face such alleged water scarcity. In the written statement, the appellant also alleged that the respondent in the election petition has also failed to mention about water availability of these villages; the respondent has further failed to mention as to since when has there been water scarcity?

19. The appellant in the written statement further alleged that the respondent has also not mentioned as to how many houses are there in these villages; how many persons are living in each of the houses; and how many persons are voters in these villages. The respondent has also not mentioned as to how many villages have water connections; and when and where the water scarcity had been noticed in these villages. He has also not mentioned as to when this complete breakdown or insufficient water supply had occasioned to these villages nor has he mentioned the date, time, place or any other details of such breakdown and has generally failed to give the details as required under Section 83 of the Act.

20. In the written statement it was also stated that the drilling machines allegedly owned by Tejaswini Bore Wells which were being operated at Ambeudok. There is, therefore, no concrete evidence that the bore holes drilled were bore wells to establish the flow of water from the ground table to surface ground. Similarly, the respondent has miserably failed to give particulars as to which villages did not have ambulances and what was the number of voters in the said villages. The respondent has failed to give particulars regarding parking of the ambulances i.e. where these ambulances were parked; in which villages they were parked; whether there was any driver to drive the said ambulances and as to where they were parked. Similarly, the respondent failed to give particulars regarding the bore wells whose cost as alleged amounts to Rs. 6,38,557/-. Similarly, expenditure of Rs. 12,50,000/- has been alleged to have been made for the purchase of ambulances. The particulars have not been provided. It is not clear as to how the respondent has come to the figure of Rs. 5,00,000/- which according to him has been spent by the appellant. He did not give any particulars regarding either of the bore wells or the ambulances.

21. The appellant denied crossing the limit of Rs. 5,00,000/- as prescribed under the Act and the

Rules framed thereunder. It is also alleged that the appellant did not construct any bore wells nor did he provide any ambulances to the villagers and, therefore, the question of showing the same in the election expenses did not arise at all. The appellant denied that an amount of Rs. 6,38,557/- and an amount of Rs. 12,50,000/- as alleged has been the expenditure factually incurred by the appellant and denied having committed any corrupt practice. The question of the election results being materially affected does not arise at all and, therefore, the election petition is liable to be dismissed.

22. It was specifically argued that the election petition is liable to be dismissed because there has been non compliance of Section 83(1) of the Act because there was no sufficiency and adequacy of pleadings in the election petition. Section 83(1) of the Act reads as under:

83. *Contents of petition.*— (1) An election petition—

- a) shall contain a concise statement of the material facts on which the petitioner relies;
- b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

23. According to the appellant, the High Court had erroneously held that the election petition is not liable to be dismissed in limine under Section 86 of the Act for alleged non-compliance of the provisions of Section 83(1) of the Act.

24. In the impugned judgment, the High Court erroneously concluded that the election petition when read as a whole discloses that it has material facts stated and regarding which triable issues are also framed and, therefore, it cannot be rejected at the preliminary stage.

25. The High Court in the impugned judgment has discussed the decision of this Court in *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*

(1987) Supp. SCC 93. According to the appellant, the High Court erroneously distinguished this case. The impugned judgment of the High Court is neither in consonance with the provisions of the Act nor according to the settled legal position as has been crystallized in a number of cases by this Court.

26. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.

27. In this election petition, respondent No. 1 has challenged appellant's election primarily on the ground of corrupt practices, alleging that the appellant dug bore wells in the constituency and provided ambulances after the election notification was issued in order to lure the voters from the constituency or induce them to vote for the appellant. According to the appellant, the aforesaid allegations do not even on their face value constitute corrupt practices within the meaning of Section 100 or Section 123 of the Act. The Act postulates or contemplates bribery to mean any gift, offer or promise by a candidate of any gratification with the object, directly or indirectly of inducing any elector in order to make him vote for him.

28. For reference, Section 100 and Section 123 of the 1951 Act read as under:

"Section 100 - Grounds for declaring election to be void - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of [the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

- (b) omitted

- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void".

"Section 123 - Corrupt practices— The following shall be deemed to be corrupt practices for the purposes of this Act:—

- (1) "Bribery" that is to say—

- (A) any gift offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the objects, directly or indirectly of inducing—

- (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

- (b) an elector to vote or refrain from voting at an election, or as a reward to—

- (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

- (ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for [withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature."

29. The appellant submitted that corrupt practices pleaded by respondent No. 1 are limited to digging of 13 bore wells in villages falling under the constituency in question after notification of holding of election was issued. The basis for this allegation that the machinery allegedly used to dig bore holes in the ground as provided in paragraph 16 of the election petition and the same machinery owned by a third party which was hired in the past to work for the Salgaoncar Mining Industries at Vagus Valley.

30. Respondent No. 1 in paragraph 16 of the election petition has alleged that owner of the Salgaoncar Mining Industries is the appellant herein and on this basis the conclusion is a sought to be drawn and the averments made to the effect that "it is obvious that the cost of the said wells and the other wells were borne by the returned candidate through his business concern, namely Salgaoncar Mining Industries".

31. According to the appellant, the pleadings in the election petition regarding corrupt practice are limited to digging of bore wells only and there is no pleading on the material facts whether and in what manner the voters of the constituency were influenced to vote in favour of the appellant. There is no pleadings on the material facts whether any water drawing equipment was installed in the said bore holes so dug and that such bore holes became water bore wells and that the water could be drawn from them.

32. The appellant submitted that there is total absence of material pleadings so as to prove that due to the alleged corrupt practice the election has been vitiated in a manner that such bore holes not being dug by the appellant who has been returned as a winning candidate and either respondent No. 2 or respondent No. 1 could have been returned as a winning candidate.

33. The material fact whether such bore holes were dug with the consent and/or active knowledge of the appellant is totally missing.

34. The material fact regarding the estimates of costs involved is missing and is limited to the costs of drilling the bore holes and not of installing the water drawing plant and machinery in them to draw water from the bore holes. According to the appellant, the said pleading is totally general and vague in nature.

35. The second allegation is regarding the alleged corrupt practice by purchasing 5 Maruti Ambulances in the name of his mining company viz. M/s. Salgaoncar Mining Industries Pvt. Ltd.

36. According to the appellant, there are no material facts in the pleading of the election petition that for whose benefit such ambulances were deployed so as to constitute a 'bribe' to the voters and that to an extent that would have influenced the outcome of the election.

37. The appellant also submitted that there are no averments with regard to such ambulances being specifically deployed for the benefit of any elector in the constituency.

38. The appellant submitted that any company operating mines on large scale with heavy machinery is under an obligatory duty to maintain safety of the mines and is, as such, statutorily required to provide required facilities including deployment of ambulances in adequate numbers at various mines to ensure safety of the persons working in the mines. The various mines of Salgaoncar Mining Industries are spread over large areas falling in the constituency.

39. According to the appellant there is no material fact in the pleading of the election petition to the effect regarding the deployment of such ambulances at which specific places at which specific time and for the benefit of whom and whether that was done at the behest and influence of the appellant.

40. According to the appellant, the third allegation pertains to the election expenses incurred by the appellant on the basis of that amount spent on digging of bore holes as well as the cost of 5 ambulances deployed for discharge for statutory requirement for carrying out mining operations by a company ought to be calculated towards the election expenses incurred by the appellant is devoid of any merit in view of the insufficiency of pleadings in terms of 'material facts' with respect to the two main allegations of

corrupt practices relating to digging of bore holes and purchase of 5 ambulances.

41. According to the appellant, the High Court in the impugned judgment has totally misdirected itself by misconstruing the ratio laid down in a catena of cases pronounced by this Court. The other material questions of general importance arising in the petition for determination by this Court are whether amenities or facilities provided in general and not in particular by a candidate or his agent or by any other person with the consent of the candidate, is a corrupt practice or a bribery or a gratification within the meaning of Section 100 (1)(b) read with Section 123(1) of the 1951 Act. According to the appellant, the respondent did not furnish affidavit in Form 25 as required under Rule 94A of the Conduct of Election Rules, 1961 and in terms of proviso to Section 83 of the Act, is fatal to the maintainability of an election petition on the ground of corrupt practices.

42. According to the appellant, the respondent failed to plead the fact which constitutes an offence under Section 100 of the Act and the appeal deserves to be allowed and the election petition deserves to be dismissed.

43. The short question which falls for adjudication in this case is whether the election petition is liable to be dismissed because of lack of material facts. This controversy is no long res integra. More than a century ago, in *Phillips v. Phillips* (1878) 4 QBD 127: 48 LJ QB 135, Cotton, L.J. stated:

“What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial.”

44. In *Bruce v. Odhams Press Ltd.* (1936) 1 KB 697: (1936) 1 All ER 287 (CA), Scott, L. J. referring to *Phillips*' case (supra) observed:

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad; it is ‘demurrable’ in the old phraseology, and in the new is liable to be ‘struck out’ under R. S. C. Order 25 Rule 4 (see *Phillips v. Phillips*); or ‘a

further and better statement of claim’ may be ordered under Rule 7.”

45. In *Halsbury's Laws of England* (4th Edn.), Vol. 36, para 38, it has been stated:

“38. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely, either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at the trial without obtaining the leave of the Court.”

46. When we revert to the Indian cases, we find that our courts have accepted the principle laid down by the English cases. We would like to refer to some of them.

47. In *Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi & Others* (1969) 1 SCC 372, this Court observed as under:

“5. The first question is whether the trial judge should have allowed the amendment. Section 83(1)(b) provides that “An election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice”. The section is mandatory

48. In *Samant N. Balkrishna & Another v. George Fernandez & Others* (1969) 3 SCC 238, this Court observed as under:

“37. From our examination of all the cases that were cited before us we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely

repeating the words of the statute does not amount to a proper statement of facts and the Section requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition."

49. In *Hardwari Lal v. Kanwal Singh* (1972) 1 SCC 214, a three judge Bench of this Court observed as under:

"22. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action."

50. The question of material facts in the election petition was comprehensively dealt with by this Court in *Azhar Hussain's case* (*supra*). The court observed that it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Representation of the People Act, 1950. Section 87(1) and Section 87(2) of the Act apply to the election petition. Section 87(1) of the Act reads as under:

"87. *Procedure before the High Court* – (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may, be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of the suits;

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) xxx xxx xxx"

51. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and

Order 7 Rule 11(a) of the Code. These provisions are set out as under:

"Order 6, Rule 16: *Striking out pleadings*.—

The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—

- (a) which may be unnecessary, scandalous, frivolous or vexatious; or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or
- (c) which is otherwise an abuse of the process of the court.

Order 7, Rule 11(a). *Rejection of plaint*.—

The plaint shall be rejected in the following cases—

- (a) where it does not disclose a cause of action;

xxx xxx xxx

xxx xxx xxx"

42. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

53. This Court in *Samant N. Balkrishna's case* (*supra*) has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all.

54. In *Udhav Singh v. Madhav Rao Scindia* (1977) 1 SCC 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead

even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

55. In *V. Narayanaswamy v. C. P. Thirunavukarasu* (2000) 2 SCC 294, this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts.

56. In *L. R. Shivaramagowda & Others v. T. M. Chandrashekar (dead) by LRs & Others* (1999) 1 SCC 666, this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under:

"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment....."

57. In *Udhav Singh's case* (supra), this Court observed as under:

"41. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single *material fact* leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of *material facts*, the petition is liable to be summarily rejected for want of cause of action. In the case of a petition suffering from a deficiency of *material particulars* the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

58. In *H. D. Revanna's case* (supra), the appeal was filed by the candidate who had succeeded in

the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure.

59. In *Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi & Others* (2005) 5 SCC 46, this Court observed thus:

"14. Necessary averment of facts constituting an appeal on the ground of "his religion" to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11 Order 7 of the Code."

60. In *Harkirat Singh v. Amrinder Singh* (2005) 13 SCC 511, this Court again reiterated the distinction between 'material facts' and 'material particulars' and observed as under:

"51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on

the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

61. In *Sudarsha Avasthi v. Shiv Pal Singh* (2008) 7 SCC 604, this Court observed as under:

“20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose”

62. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition.

63. The election petition must contain a concise statement of “material facts” on which the petitioner relies. There is no definition of “material facts” either in the Representation of Peoples Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this court has laid down that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. “Material facts” in other words mean the entire bundle of facts which would constitute a complete cause of action.

64. This court in *Harkirat Singh's case* (supra) tried to give various meanings of “material facts”. The relevant paragraph 48 of the said judgment is reproduced as under:

“The expression ‘material facts’ has neither been defined in the Act nor in the Code. According to the dictionary meaning, ‘material’ means ‘fundamental’, ‘vital’, ‘basic’, ‘cardinal’, ‘central’, ‘crucial’, ‘decisive’, ‘essential’, ‘pivotal’, ‘indispensable’, ‘elementary’ or ‘primary’. [Burton's Legal Thesaurus, (Third Edn.); p. 349]. The phrase ‘material facts’, therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the

existence of a cause of action or defence are material facts and must be stated in the pleading by the party.”

65. In the context of a charge of corrupt practice, “material facts” would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (respondent herein) is bound to substantiate before he can succeed on that charge. It is also well-settled that if “material facts” are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.

66. According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election-petitioner (respondent herein) and the election petition is liable to be summarily dismissed on that ground.

67. The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.

68. When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action. Considering the facts and circumstances of this case and principles applicable to the election petition, this appeal deserves to be allowed and we accordingly allow this appeal. Consequently, the election petition stands dismissed.

69. In the facts and circumstances of this case, we direct the parties to bear their own costs.

..... J.
(Dalveer Bhandari)

..... J.
(Harjit Singh Bedi)

New Delhi,
August 20, 2009.

Department of Industries

Directorate of Industries, Trade & Commerce

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Order

No. 3/421/2009-10/Adm/DITC/4077

In pursuance to clause 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act") the following officers are hereby appointed as Public Information Officer and Assistant Public Information Officer for the Directorate of Industries, Trade and Commerce to deal with the applications received from the Public under the said Act.

Sr. No.	Designation of the Officer	Designated as	Jurisdiction
1	2	3	4
1.	General Manager (DIC) Department of Industries, Trade & Commerce	Public Information Officer	State of Goa.
2.	Assistant Accounts Officer, Accounts Section, Department of Industries, Trade & Commerce	Assistant Public Information Officer	State of Goa.

The Assistant Public Information Officer shall on receipt of the applications for information or appeal under the RTI Act, forward the same forthwith to the Public Information Officer, as required under sub-section (1) of Section 7.

The Public Information Officer shall on receipt of a request under Section 6, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fees as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9.

The above designated Officers shall exercise and perform the powers/functions laid down under the RTI Act, 2005 with immediate effect.

The Director of Industries, Trade and Commerce will be the First Appellate Authority under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer of the Department.

Sanjit Rodrigues, Director of Industries, Trade & Commerce

Panaji, 17th November, 2009.

Department of Labour

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 15-09-2009 in reference No. IT/11/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 15th October, 2009.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT PANAJI

(Before Smt. Anuja Prabhudessai,
Hon'ble Presiding Officer)

Ref. No. IT/11/99

Shri Manoj Kolamkar and
one other,

Near bus stand, Headland Sada,
Mormugao Harbour, Goa.

Workmen/Party I

V/s

M/s. Supreme Marine Navigators,
C/o M/s. Jyoti Sales Corporation,
Kamat Building,
Margao-Goa.

Employer/Party II

Workmen/Party I is represented by Adv., T. Pereira.

Employer/Party II is represented by Adv., G. B. Kamat.

AWARD

(Passed on this 15th day of September, 2009)

By order dated 2-2-99, the Government of Goa, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Supreme Marine Navigators, in terminating the services of S/Shri Manoj Kolamkar, Supervisor, and R. R. Palkar, Office Assistant, with effect from 1-4-98, is legal and justified?

(2) If not, to what relief the workmen are entitled?"

2. On receipt of the reference IT/11/99 was registered. Notices were issued to both parties.

The Party I/workmen have filed their claim statement at Exb. 4. The Party II/employer has filed its written statement at Exb. 5. The rejoinder of the Party I is at Exb. 6.

3. The case of the Party I/workmen in brief is that the workman, Manoj Kolamkar was appointed in the establishment of the Party II/employer as a Barge Supervisor-cum-Office Assistant w.e.f. 1-1-1989. It is stated that the said post was purely clerical post with duties of maintaining all documentary records relating to the barges of the Party II and also do other outdoor duties. The workman, Shri Ravindranath Palkar was appointed in the Party II establishment as an Office Assistant w.e.f. 1-6-91. His duties are stated to be similar to the duties of Manoj Kolamkar. It is stated that both these employees are the 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act.

4. The Party I/workmen have stated that the Party II sent the barges M.V. Ires and M.V. Viola to Gujarat in December, 1995 and February, 1996 respectively. Both these workmen were deputed in Gujarat with the said barges and they were required to perform the same duties. The Party I/workmen have stated that sometime in the month of May, 1996, the Party II closed down its office at Vasco. The barges M.V. Ires and M.V. Viola were brought back to Goa for repairs in February, 1997 and April, 1997 respectively. The barge M.V. Ires was repaired and sent back to Gujarat in the 1st fortnight of May, 1997. However, both workmen were directed to remain in Goa to attend to the repairs of the barge M.V. Viola, which was continued to be under repairs till October, 1997. From November, 1997 both workmen were directed to report to work in Margao office of the Party II and to perform the same duties as performed in Vasco office. The Party I/workmen have stated that they were paid their wages till January, 1998. The Party I/workmen have stated that they were not paid their wages for the month of February, 1998 and instead they were told that their services were no longer required. When these workmen protested in writing vide letters dated 12-3-98, the Party II issued two separate letters to these workmen terminating their services w.e.f. 30-3-98.

5. The Party I/workmen have stated that the grounds stated in termination letters are false and baseless. The Party I/workmen have stated that the Party II has not drawn up a seniority list and that they were not liable to be retrenched while retaining the junior employees. The Party I/workmen have also stated that the retrenchment

dues have not been properly calculated/paid. The Party I/workmen have stated that their termination of their services is contrary to the law. The Party I/workmen have therefore prayed for reinstatement with all consequential benefits.

6. The Party II/employer has stated that the workman, Shri Manoj Kolamkar was entering into contracts for hiring the barges, he was getting barges repaired and that he used to take independent decisions in these matters as a Supervisor. The Party II/employer has therefore claimed that Shri Manoj Kolamkar was not a 'workman' within the meaning of Section 2(s) of the Act. The Party II/employer has further stated that Shri R. R. Palkar who was working as Office Assistant had already crossed the retirement age and as such he cannot claim protection under Industrial Disputes Act. The Party II has further stated that services of these workers were terminated w.e.f. 30-3-98 on account of permanent closure of the establishment and that they were paid all dues payable under the Act.

7. Based on the aforesaid pleadings, following issues were framed.

1. Whether the workmen/Party I prove that termination of their services of the Party II w.e.f. 1-4-98 is illegal and unjustified?
2. Whether the employer/Party II proves that Shri Manoj Kolamkar is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?
3. Whether the employer/Party II proves that Shri R. R. Palkar cannot claim any protection under the Industrial Disputes Act, 1947?
4. Whether the employer/Party II proves that the termination of services of the workmen/Party I is on account of permanent closure of the Party II firm and its business activities from July, 1996?
5. Whether the workmen/Party I are entitled to any relief?
6. What Award?

8. Learned advocate, Shri T. Pereira has argued on behalf of the Party I workers and learned advocate, Shri Kamat has argued on behalf of the Party II company. I have perused the records and considered the arguments and my findings on the aforesaid issues are as under:

Issue Nos. 2 & 3: I shall first decide these two issues as these issues pertain to the locus of the

Party I/workers to seek protection under the Industrial Disputes Act and consequently the jurisdiction of the Tribunal to grant such relief.

9. Learned advocate, Shri Kamat has argued that the worker, Shri Manoj Kolamkar was appointed as a Supervisor and his last drawn salary was Rs. 3,500/-. He has further argued that in the letter at Exb. W-14 the worker, Manoj Kolamkar has himself admitted that he was a supervisory staff. Learned advocate, Shri Kamat therefore claims that the worker, Manoj Kolamkar was not a workman within the meaning of Section 2(s) of the Act.

10. It may be mentioned here that an employee cannot be taken out of the definition of the 'workman' solely on the bases of his designation. The determinative factor is the nature of the main duties of the employee. In the instant case, the appointment letter at Exb. W-11 indicates that the Party I/worker, Manoj Kolamkar was appointed as a Barge Supervisor-cum-Office Assistant. The Party I had pleaded that the said post was a purely clerical post with duties of maintaining all documentary records relating to barges and also doing other outdoor clerical duties of going to various Government offices. In his evidence before the Tribunal Shri Manoj Kolamkar (witness No. 2) has deposed that he was attending the head office at Margao as well as branch office at Vasco. He has stated that he used to go to various loading points at Sanvordem, Sarmanas & Pale and that he used to also work at barge repair workshop of the Party II, at Cortalim. He has deposed that he used to also visit various officers, such as Exporters, Mercantile, Marine Department, Captain of Ports, Insurance Company etc. in connection with the work of barge. He has deposed that he used to perform similar duties when he was deputed to Gujarat on barge Viola. It may be mentioned that the Party II had averred that the workman, Manoj Kolamkar used to enter into contract for hiring of barges and attend the work of getting the barges repaired. However, the evidence of Asha Madkarni (witness No. 1 of Party II) does not indicate that the workman had entered into any contract or that he had authority to enter into such contract. In her deposition before the Tribunal Smt. Asha Madkarni has deposed that the worker, Manoj Kolamkar was working as a Supervisor and that he was looking after the work of hiring of barges and repairs of barges. Her evidence does not indicate that the Party I/workman Manoj Kolamkar was supervising the work of any employees or that he was exercising any kind of control over the employees.

11. It is to be noted that the appointment letter at Exb. W-11 viz-a-viz the pleadings and the evidence on record clearly indicates that the Party I worker, Kolamkar was appointed as a Barge Supervisor-cum-Office Assistant and he was required to look after maintenance and repairs of the barge. He was also required to do other duties such as visit Insurance Office and other Government offices for obtaining NOC and for complying with other formalities required for operating the barge. At this juncture it is advantageous to refer to the decision of the *Bombay High Court in the case of Bombay Dyeing and Manufacturing Co. Ltd., v/s R. A. Bidoo and another reported in 1989 (2) Bom. C. R. 367*, wherein it has been held as under:

As the Labour Court has rightly pointed out, "supervision of a plant or machine does not make that work supervisory within the meaning of section 3(13)". The word 'supervisor' though it has become part of the English language, means a person who oversees the work of others. It means 'oversees'. A person can be said to be a supervisor if there are persons working under him, over whose work he has to keep a watch. He is that person who examines and keeps a watch over the work of his subordinates and if they erring any way, corrects them. It is his duty to see that the work in an industrial unit is done in accordance with the manual, if there is one, or in accordance with usual procedure. It is not his function to bring about any innovation; it is not his function to take any managerial decisions, but it is his duty to see that the persons over whom he is supposed to supervise do the work assigned to them according to the rules and regulations. The central concept of a supervisor is the fact that there are certain persons working under him. If a person is doing any work which does not require him to look after or inspect or examine the work of persons who are subordinate to him or working under him, that person can never be said to be a supervisor. In other words, the supervision is necessarily by reference to the persons working under a supervisor.

Supervision as correctly understood does not extend to supervision of plant or machine. A person may check whether machine is working properly or not, but that does by any stretch of imagination make him a supervisor. He is only finding out whether the machine is in working condition. If it is not in a working condition, to see that it is put in a working condition. This

cannot be called supervision at all. To repeat, 'supervision' means, supervision over men and not over machines.

12. As stated earlier, the worker, Manoj Kolamkar was appointed as a Barge Supervisor and the reference made in Exb. W-17 has to be read in this context and he cannot be termed as a Supervisor solely on the bases of the statement made in the letter at Exb. 17. It is also pertinent to note that there is absolutely no evidence to show that any employees were working under Party I/worker Manoj Kolamkar and that he was required to supervise the work of his subordinates. There is also no evidence to show that any of these workmen were reporting to Manoj Kolamkar or that he was exercising any sort of control over working of these employees. Hence, the workmen, Manoj Kolamkar is not a Supervisor but is a workman within the meaning of Section 2(s) of the Act. Issue No. 2 is therefore answered in the negative.

13. Learned advocate, Shri Kamat has argued that the worker, Ravindranath Palkar was appointed by the Party II after attaining the age of superannuation. Learned advocate, Shri Kamat claims that the said employment was a 're-employment' and the termination of the said employment does not constitute retrenchment within the meaning of Sec. 2(o) of the Act. He has relied upon the decision of the Apex Court in the case of *Binoy Kumar Chatterjee v/s Jugantar Ltd. Reported in 1983 (46) FLR 449*. The evidence of worker, Shri Ravindra Palkar indicates that he was employed with M/s. Agencia Commercial Maritima from May, 1964. He retired from service in the said company in May, 1990, after attaining age of 58 years or retirement. The worker, Ravindra Palkar was appointed by Party II company vide letter dated 1-6-91 (Exb. W-1) w.e.f. 1st June, 1991. The worker, Ravindra Palkar continued to work for the Party II till (vide letter dated 21-3-98) (Exb. W-6 colly) his services were terminated w.e.f. 30-3-98.

14. The question which falls for consideration is whether the termination of his services w.e.f. 30-3-98 was 'retrenchment' within the meaning of Section 2(o) of the Act.

Section 2(o) defines retrenchment as the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein or

(c) termination of the service of a workman on the ground of continued ill health.

15. The letter dated 21-3-98 (Exb. W-6 colly) indicates that the services of the Party I/worker Shri Ravindra Palkar were terminated on the ground of closure of the establishment. It is thus evident that the termination of this worker does not fall under any of the excluded clauses of Section 2(o) of the Act. The judgement in the case of *Binoy Kumar Chatterjee* (Supra) is not applicable to the facts of the present case, as in the said case a journalist who was working for Jugantar Ltd. had retired from service on attaining the age of retirement. The workman was re-employed by Jugantar Ltd. for a period of 12 months only which expired on 1-12-76. The Apex Court discountenanced the contention of the said journalist that his service for further period of 12 months was continuation of his previous employment and the termination of his service was retrenchment. It was held that the age of superannuation marks the end point of the workman's service. If he is employed afresh thereafter for a term, such employment cannot be regarded as employment contemplated within the definition of the expression 'retrenchment'. The Apex Court held that the termination of the service on the expiry of the period of the contract does not fall within the meaning of Section 2(o) of the Act.

16. In the instant case, the worker, Ravindra Palkar had not retired from the service of the Party II but he had retired from the service of M/s. Agencia Commercial Maritima. He was appointed by the Party II for the first time on 1-6-91. Hence, unlike the case of Binoy Kumar, the worker, Ravindra Palkar was not re-employed by the Party II. It is also to be noticed that cl.(bb) of Section 2(o) which has been subsequently inserted w.e.f. 18-8-84 excludes from the ambit of the definition of 'retrenchment' termination of the services of a workman as a result of a non renewal

of the contract of employment, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of the employment in that behalf.

17. In the instant case unlike the case of Binoy Kumar, the appointment letter at Exb. W-6 colly does not indicate that the worker Ravindra Palkar was appointed for a specific period. The appointment letter also does not stipulate mode or manner of termination of service. This being the case, neither the principles laid down in the case of Binoy Kumar nor the provisions of clause (bb) of Section 2(o) are applicable to the facts of the present case. The termination of the services of the Party I/worker Shri Ravindra Palkar were on account of closure of the establishment and the termination does not fall within any of the excluded case. Hence the termination is 'retrenchment' within the meaning of Section 2(o) of the Act.

18. *Issues No. 1 & 4* : The services of Party I/workers, Shri R. R. Palkar and Shri Manoj Kolamkar were terminated vide letters dated 21-3-98 (Exb. W-6 & W-15) w.e.f. 30-3-98, on the ground of, closure of the establishment at Vasco. Learned advocate, Shri T. Pereira has argued that the ground stated in termination letter is false and baseless. He has argued that though in para 5 of the written statement, the Party II had averred that the business activities at Vasco establishment were closed w.e.f. July, 1996, the letters of termination states that the services of the Party I/workmen were terminated w.e.f. 30-3-98. Learned advocate, Shri Pereira has further argued that in December, 1995/February, 1996, these two workers were deputed to Gujarat and from May, 1997 till 30-3-98 they had worked in Goa. Learned advocate, Shri Pereira has argued that the fact that these two workmen had worked for Party II much after the alleged closure falsifies the reason of termination as stated in the termination letters. Learned advocate, Shri Pereira has also challenged the legality of termination on the ground of contravention of Section 25G of the Act and further argued that when the barges Iris and Viola were sent to Gujarat in May, 1997, two employees by name Sanjay Naik and Wilfred Antao were sent to Gujarat to perform the same duties which were earlier formed by these two workmen. Learned advocate, Shri Pereira has argued that the Party II had not prepared a seniority list and had thereby not proved that these two workmen were junior to said Sanjay Naik and Wilfred Antao. Learned advocate, Shri Pereira has challenged the legality on the ground that the two workers were not paid retrenchment compensation, gratuity/dues.

19. Learned advocate, Shri Kamat has argued that the settlement at Exb. 12 colly and the settlement dated 5-2-96 at Exb. W-13 indicates that the seven crew members of barge Iris were retrenched w.e.f. 4-12-95, whereas eleven crew members on the barge Viola were retrenched w.e.f. 31-12-95. Learned advocate, Shri Kamat contends that these two settlements prove the intention of the Party II to discontinue the business activity in Goa. Learned advocate, Shri Kamat has argued that the Party I workers were engaged to look after the operation of barges Iris and Viola. He has further argued that the evidence on record shows that the Party II is no longer operating barges in Goa. He has further argued that the workers have failed to prove that the employees retained in service were doing the same type of work as done by the Party I/workers and that they were earlier employed in Vasco establishment. He therefore claims that provisions of Section 25G are not attracted. Learned advocate, Shri Kamat has argued that the Party I/workers were paid all legal dues. He has further argued that non-payment of dues did not render the closure illegal.

20. It may be mentioned here that Party II was carrying out the business of hiring barges. The Party II had appointed Party I/workmen vide appointment letters at Exb. W-1 and W-11. The appointment letters at Exb. W-1 and W-11 indicate that the Party I/workman R. R. Palkar was appointed as Office Assistant to look after the operation of barges Iris and Viola, whereas the Party I/workman Manoj Kolamkar was appointed as a Barge Supervisor-cum-Office Assistant to look after the operations of the barges Iris and Viola. In short, both these workmen were appointed mainly to look after the operation of barges Iris and Viola. The evidence of Smt. Asha Madkarni indicates that the Party II carried out the business in Goa till February, 1996 and thereafter the business was carried out in Gujarat. She has deposed that her husband was looking after the business and he expired on 30-1-96. She has deposed that two to three months after the death of her husband she decided to close the business of the Party II in Goa. She has deposed that the services of Party I/workmen, who were working at Vasco establishment were terminated on account of closure of the business/establishment at Vasco. It is pertinent to note that the settlements at Exb. W 12 and W 13 indicate that the services of seven crew members on the barge Iris, were retrenched w.e.f. 4-12-95, whereas the services of 11 crew members of barge Viola were retrenched w.e.f. 31-12-95. The fact that the Party II had

retrenched services of the crew members of these two barges, indicates that the Party II had an intention of closing down the business in Goa.

21. The evidence on record indicates that in December, 1995, the Party II sent the barge Iris to Gujarat. The workman, R. R. Palkar was sent to Gujarat on the barge Iris. The barge Viola was sent to Gujarat in February, 1996 and the workman, Manoj Kolamkar was sent to Gujarat on barge Viola. In February, 1997 the barge Iris was brought to Goa for repairs. The workman, R. R. Palkar was also called back in Goa in February, 1997. The barge Iris was sent to Gujarat in May, 1997, the workman, R. R. Palkar was not sent to Gujarat but he continued to work in Goa till the date of his termination. Similarly, the barge Viola was brought back to Goa for repairs in April, 1997. The workman, Manoj Kolamkar was also called back to Goa. The barge Viola was sent back to Gujarat in April, 1997. After the repairs the barge Viola was sent not to Gujarat sometime in October 1997. The workman, Manoj Kolamkar was not sent to Gujarat but he continued to work in Goa till the date of his termination.

22. It may be mentioned here that though the Party I had disputed the factum of closure, the workman, Shri R. R. Palkar has admitted in his cross examination that sometime in February, 1998, Mrs. Usha Mudkarni had told him that his services would be terminated in case there was no work. The second workman, Shri Manoj Kolamkar has also admitted in his cross examination that Party II was not operating barges since about one year prior to the termination of their services. He has further admitted that the business of barge operation of the Party II at Vasco is permanently closed. Thus, the evidence on record amply proves that the Party II had stopped operating the barges in Goa and this led to the termination of these two workmen who were mainly appointed to look after the operation of the barges. Hence the reasons of termination cannot be stated to be false merely because the services of the Party I/workmen were retained till 30-3-98.

23. The Party I/workmen have stated that after the barges were repaired two employees by name Sanjay Naik and Wilfred Antao were sent to Gujarat on the said two barges. It is to be noted that Smt. Asha Mudkarni has deposed that Sanjay Naik is her cousin and not her employee. She has

deposed that Sanjay Naik was helping her in minor works. She has admitted that Sanjay Naik was sent to Gujarat. She has denied the suggestion that Sanjay Naik was doing the same work as done by the Party I/workman R. R. Palkar. She has stated that she had not sent any barge supervisors to Gujarat. She has denied the suggestion that Sanjay Naik and Wilfred Antao were sent to Gujarat to do the same work as done by Party I/workmen. It is pertinent to note that the workmen, Shri Palkar and Kolamkar were employed to look after the operation of barges. The Party I has not adduced any evidence to prove that Sanjay Naik and Wilfred Antao were also employed for similar work, on the contrary, the evidence of Shri R. R. Palkar indicates that Sanjay Naik and Wilfred Antao were appointed as clerks and hence it is difficult to accept the contention of the Party I that the said Sanjay Naik and Wilfred Antao were deputed to Gujarat to do the same work that was done by the Party I/workmen. The Party I has also not adduced any evidence to prove that said Sanjay Naik and Wilfred Antao were employed at Vasco branch and that their appointment was subsequent to the appointment of the Party I/workmen. This being the case, the Party I has failed to prove that the Party II has violated provisions of Section 25G.

24. The termination of the Party I/workmen was on account of the closure. The termination letters indicate that the Party I/workmen were paid their dues. The closure cannot be held to be illegal for inadequate payment of dues or for non-payment of compensation. The Party I has failed to prove that the termination of the workmen, Shri R. R. Palkar and Manoj Kolamkar was illegal. The termination of these two workmen was on account of the closure of business activities in Goa. Hence issue No. 1 is answered in the negative and Issue No. 4 is answered in the affirmative.

25. *Issue No. 5:* The Party I has failed to prove that their termination is illegal and unjustified. Hence they are not entitled for any relief.

Under the circumstances and in view of discussion supra, I pass the following order.

ORDER

The action of the management of M/s. Supreme Marine Navigators, in terminating the services of Shri Manoj Kolamkar, Supervisor and Shri R. R. Palkar, Office Assistant w.e.f. 1-4-98 is held to be

legal and justified. The Party I/workmen are not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

State Directorate of Craftsmen Training

Order

No. 2/137/2005/EST/SDCT/(2)/9874

On the recommendation of the Goa Public Service Commission vide their letter No. COM/II/11/60(1)/09/291 dated 25-9-2009, Government is pleased to promote Shri Domingos Coelho, to the post of Training-cum-Placement Officer (Group 'B' Gazetted) on regular basis in the pay scale of Rs. 9,300--34,800+Rs. 4,800/- with immediate effect.

Shri Coelho shall be on probation for a period of two years.

The expenditure is debited to the Budget Head "2230—Labour and Employment, 03—Training, 101—ITI, 02—ITI Centres and Expansion (Plan) 01—Salaries".

By order and in the name of the Governor of Goa.

Aleixo F. da Costa, State Director of Craftsmen Training & ex officio Joint Secretary

Panaji, 17th November, 2009.

Department of Law and Judiciary

Law (Establishment) Division

**Notifications by the High Court of
Judicature Appellate Side, Bombay**

No. A-3924/G/2009

Subject: Grant of Assured Career Progression (ACP) to the Judicial Officers as recommended by the Shetty Commission and the directions given by the Honourable Supreme Court in its judgment dated 21-3-2002 in Writ Petition No. (C) 1022/89 All India Judges Association Vs. Union of India and Others.

The Honourable the Chief Justice and Judges are pleased to confer the first Assured Career Progression Scale i.e. Rs. 10,750-300-13,150-350-14,900 on the following Judicial Officers in the cadre of Civil Judges, Junior Division & J.M.F.C. w.e.f. the dates shown against their respective names. Accordingly the concerned heads of the departments shall refix the pay of these Officers in accordance with the Order No. 8/44/97-Fin (R&C)-FPC/Part IV dated 8th May, 2003 issued by the Government of Goa in Finance (Rev. & Cont.) Department and other relevant orders/circulars/judgments.

Sr. No.	Name of the Judicial Officers	Date of appointment in cadre	Date of conferment of ACP	Present posting
1	2	3	4	5
1.	Shri Edger P. Fernandes	17-07-2000	17-07-2005	C.J.S.D. & J.M.F.C., Panaji.
2.	Smt. Durga V. Madkaikar	18-07-2000	18-07-2005	C.J.S.D. & J.M.F.C., Margao.
3.	Ms. Bela N. Naik	05-01-1998	05-01-2005	C.J.S.D. & J.M.F.C., Mapusa, Panaji.
4.	Shri D. M. Kerkar	18-07-2000	18-07-2005	C.J.S.D. & J.M.F.C., Mapusa, Panaji.

High Court, Bombay

Dated: 27th October, 2009.

A. I. S. Cheema

Registrar General.

No. A-3924/G/2009

Subject: Grant of Assured Career Progression (ACP) to the Judicial Officers as recommended by the Shetty Commission and the directions given by the Honourable Supreme Court in its judgment dated 21-3-2002 in Writ Petition No. (C) 1022/89 All India Judges Association Vs. Union of India and Others.

The Honourable the Chief Justice and Judges are pleased to confer the first Assured Career Progression Scale i.e. Rs. 14,200-350-15,950-400-18,350 on the following Judicial Officers in the cadre of Senior Civil Judges w.e.f. the dates shown against their respective names. Accordingly the concerned heads of the departments shall refix the pay of these Officers in accordance with the Order

No. 8/44/97-Fin (R&C)-FPC/Part IV dated 8th May, 2003 issued by the Government of Goa in Finance (Rev. & Cont.) Department and other relevant orders/circulars/judgments.

Sr. No.	Name of the Judicial Officers	Date of appointment in cadre	Date of conferment of ACP	Present posting
1	2	3	4	5
1.	Shri Crisanto Fernandes	10-10-2002	10-10-2007	C.J.S.D. & C.J.M., Margao.
2.	Smt. Sayon-nara Laad	10-10-2002	10-10-2007	C.J.S.D. & C.J.M., Quepem, Margao.
3.	Shri P. M. Shinde	07-09-1998	07-09-2007	C.J.S.D. & C.J.M., Panaji.

High Court, Bombay

Dated: 27th October, 2009.

A. I. S. Cheema

Registrar General.

Department of Personnel

Order

No. 4/26/88-PER

Read: 1) Government order No. 4/26/88-PER dated 11-04-2007.

2) Government order No. 4/26/88-PER dated 29-12-2008.

The ad hoc promotion of Dr. Celsa Pinto to the post of Director of Education is hereby further extended for six months with effect from 11-10-2008 to 10-04-2009.

This issues with the approval of the Goa Public Service Commission vide its letter No. COM/II/11/15(1)/94-05/Vol.III/1694 dated 28-10-2009.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 9th November, 2009.

Order

No. 6/4/91-PER(Part III)

The Governor of Goa is pleased to promote on ad hoc basis, the following Officers in Junior Scale

of Goa Civil Service to Senior Scale of the same service in the Pay Band of Rs. 15,600-39,100 with Grade Pay of Rs. 6,600/- with immediate effect and post them as shown below:

Sr. No.	Name of the Officer	Present posting	Posted on promotion as
1	2	3	4
1.	Smt. Shabari Manjrekar	Deputy Director (Panchayats), South, Margao	Additional Collector-II, North, Panaji.
2.	Shri Venancio Furtado	Deputy Collector & SDM, Quepem	General Manager, Entertainment Society of Goa, Panaji.

2. The above appointments shall be for a period of one year in the first instance.

3. The above ad hoc appointments will not bestow on the promoted Officers any claim for regular appointment and the service rendered on ad hoc basis in the Grade will not count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade.

5. The posting of Shri Venancio Furtado shall be on deputation basis and shall be governed by the standard terms of deputation as contained in this Department's Office Memorandum No. 13/4/74-PER dated 12-2-1999 and as amended.

6. Consequently, Shri Meghnath P. Porab, Additional Collector-II, North, Panaji is transferred and posted as Additional Inspector General of Prisons, with immediate effect and in public interest.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 13th November, 2009.

Order

No. 6/9/2009-PER(Part-I)

Shri Sunil P. Masurkar, Director of Civil Supplies, Panaji shall hold charge of the post of Managing Director, Goa State SC & ST Finance Development Corporation in addition to his own duties, with immediate effect and until further orders.

Shri Y. B. Tavde, Additional Collector II, South, shall hold charge of the post of Project Director,

DRDA, South, Margao in addition to his own duties, with immediate effect and until further orders.

Shri N. S. Navti, Joint Chief Electoral Officer shall continue to hold charge of the post of Chief Executive Officer, Zilla Panchayat, South in addition to his own duties, until further orders.

By order and in the name of the Governor of Goa.

Yetindra M. Maralkar, Joint Secretary (Personnel).

Porvorim, 17th November, 2009.

Department of Public Health

Addendum

No. 45/5/2009-I/PHD

Read: 1) Memorandum No. 45/5/2009-I/PHD dated 13-10-2009.

2) Government Order No. 45/5/2009-I/PHD dated 16-10-2009.

In the Government Order dated 16-10-2009 referred to (2) above, the following para shall be added as para second after the first para.

The pay of Dr. Conrad Martin D'Sa, Sr. Ophthalmic Surgeon shall be fixed in terms of provisions of FR 22 (I)(a)(2).

By order and in the name of the Governor of Goa.

Maria J. R. Pires, Under Secretary (Health II).

Porvorim, 12th November, 2009.

Addendum

No. 22/5/2003-I/PHD

Read: 1. Memorandum No. 22/5/2003-I/PHD dated 22-10-2009.

2. Government Order No. 22/5/2003-I/PHD dated 29-10-2009.

In the Government Order dated 29-10-2009 referred to (2) above, the following para shall be added as para second after the first para.

The pay of Dr. Nelly Marwen Pereira De Sa, Sr. Paediatrician shall be fixed in terms of provisions of FR 22 (I)(a)(2).

By order and in the name of the Governor of Goa.

Maria J. R. Pires, Under Secretary (Health II).

Porvorim, 13th November, 2009.

Corrigendum

No. 35/40/2001-I/PHD

Read: Government Order No. 35/40/2001-I/PHD dated 20-07-2009.

In the Government Order dated 20-07-2009 referred to above, the name of Member Secretary figuring at Sr. No. 8 "Dr. Pradeep Padwal, ex officio Member Secretary" shall be substituted to read as Chief Medical Officer, State Family Welfare Bureau, Directorate of Health Services.

By order and in the name of the Governor of Goa.

Maria J. R. Pires, Under Secretary (Health II).

Porvorim, 3rd November, 2009.

Department of Public Works

Office of the Principal Chief Engineer

Order

No. 40/2/2009-PCE-PWD-ADM(II)/268

Government is pleased to order the transfer of the following Assistant Engineers (Civil) in this Department and post them at places shown against their names in column No. 4 below with immediate effect in public interest.

Sr. No.	Name	From	To
1	2	3	4
1.	Shri Sanjay L. Raikar	Sub-Div. III, Div. V, PWD, Mapusa-Goa	Sub-Div. IV, Div. V, PWD, Pernem vice Shri Allen J. G. Pereira, AE, transferred.
2.	Shri Allen J. G. Pereira	Sub-Div. IV, Div. V, PWD, Pernem-Goa	Sub-Div. III, Div. V, PWD, Mapusa vice Shri Sanjay L. Raikar, AE, transferred.

The Officer at Sr. No. 2, should move first.

By order and in the name of the Governor of Goa.

A. M. Wachasundar, Principal Chief Engineer, PWD & ex officio Addl. Secretary.

Panaji, 12th November, 2009.

Order

No. 40/2/2009/PCE-PWD-ADM(II)/276

Read: No. 40/2/2009/PCE-PWD-ADM(II)/268 dated 12-11-2009.

The transfers of S/Shri Sanjay L. Raikar & Allen J. G. Pereira, Assistant Engineers effected vide order read above stands cancelled.

Consequently, S/Shri S. L. Raikar & Allen J. G. Pereira shall continue to work in their previous place of posting in S.D. III/Div. V, PWD, Mapusa & S.D. IV/Div. V, PWD, Pernem-Goa, respectively.

J. S. Rego, Principal Chief Engineer, P.W.D.

Panaji, 16th November, 2009.

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Department of Revenue
Order

No. 3/7/2006-RD

Read: Report of Mamlatdar and Administrator of Devasthan vide letter No. MAM/PER/DEV/PALYEM/08/737 dated 29-09-2008 and report dated 10-11-2009 of Under Secretary (Revenue-II), Government of Goa.

Whereas upon receipt of a number of complaints from the mahajans of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem-Goa, the Government vide Order No. 3/7/2006-RD dated 20-02-2007 directed the Mamlatdar of Pernem to re-hear the matter into the allegations of flow of money in temple accounts of Shree Bhumika Vetal Devasthan, Paliem and conduct a detailed inquiry after giving an opportunity of being heard to all members of managing Committee of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem-Goa (hereinafter referred to as the "said Committee");

And whereas the Mamlatdar of Pernem issued a Show Cause Notice No. MAM/PER/PALYEM/08/1672 dated 26-06-2008 to all the members of the said Committee calling upon them to explain as to why it should not be proposed to Government to dissolve the Committee of Shree Bhumika Vetal Devasthan, Paliem, under article 44 of Devasthan Regulation.

And whereas the Mamlatdar of Pernem after hearing members of the said Committee and the complainants submitted their report vide letter No. MAM/PER/DEV/PALYEM/08/737 dated

29-09-2008 to the Government for its decision (hereinafter referred to as the "said Report");

And whereas the Government considered the said Report of the Mamlatdar of Pernem and concluded that the conduct of the said Committee falls within the purview of the provisions of Articles 44 (1) and 44 (2), of the Devasthan Regulations and dissolved the said Committee vide Order dated 14-01-2009 (hereinafter referred to as the "said Government Order");

And whereas Shri Madan Jairam Parob, Attorney of Shree Devi Bhumika Vetal Devasthan, Paliem and five others, challenged the said Government Order vide Writ Petition bearing No. 34/2009 before the Hon'ble High Court of Bombay at Goa;

And whereas the Hon'ble High Court vide its Order dated 29-01-2009 passed in the said Writ Petition set aside the said Government Order dated 14-01-2009 and remanded the matter back to the Government with a direction to give notice to the Petitioners to show cause as to why the report of the Mamlatdar should not be accepted and after giving the notice of hearing to the Petitioner, the Government may take decision on merits, as deemed fit and in accordance with law;

And whereas the Government in compliance with above direction of the Hon'ble High Court issued Show Cause Notice bearing No. 3/7/2006-RD dated 16-02-2009 to Shri Madan Jairam Parob, Attorney of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem and seven others to show cause as to why the report of Mamlatdar of Pernem bearing No. MAM/PER/DEV/PALYEM/08/737 dated 29-09-2008 shall not be accepted and why the existing Committee of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem shall not be dissolved as per Devasthan Regulations;

And whereas the said Shri Madan Jairam Parob, Attorney of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem and seven others filed their reply dated 26-03-2009 to the Show Cause Notice and also filed their written submissions dated 30-07-2009.

And whereas the Government after examining the said reply and arguments, has decided to dissolve the said Committee without further delay by appointing Mamlatdar of Pernem as its President and other Members of Committee such as Attorney and Treasurer from the Mahajans, as the present Committee is involved in illegalities and have miserably failed to perform the duties as required under the Devasthan Regulations;

Now, therefore, in exercise of powers conferred by Article 44 of the Legislative Diploma No. 645 dated 30-03-1933 and amended Diploma No. 1898 dated 29-05-1959, the Government of Goa, hereby dissolves the existing Managing Committee of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem-Goa with immediate effect and appoints a new Managing Committee of Shree Devi Bhumika Vetal Devasthan, Paliem, Pernem for triennium upto year 2010 as under:

1. Mamlatdar of Pernem – President.
2. Shri Eknath Tukaram Parab – Attorney.
3. Shri Gopal Attmaram Parab – Treasurer.

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 13th November, 2009.

Notification

No. 23/37/2009-RD

Whereas it appears to the Government of Goa (hereinafter referred to as “the Government”) that the land specified in the Schedule hereto (hereinafter referred to as the “said land”) is likely to be needed for public purpose, viz. Land Acquisition for construction of approach road to proposed bridge on Khandepar River at Codli, Kirlapal-Dabal & Davkond Dharbandora in Sanvordem Constituency.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as “the said Act”) that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector & S.D.O., Quepem-Goa to perform the functions of a Collector, South Goa District, Margao-Goa under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao-Goa.
2. The Deputy Collector & S.D.O., Quepem-Goa.
3. The Executive Engineer, WD XVIII(R), S.D. IV, PWD, Ponda-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector & S.D.O., Quepem-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Sanguem

Village: Codli

Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
14/1 Part O:	1. Gopal Rango Gaunkar. 2. Krishna Rango Gaunkar. 3. Arjun Rango Gaunkar. 4. Baban Rango Gaunkar.	3020

Boundaries :

North: Village Darbandora Road.

South: S. No. 14/1.

East : Village Darbandora Road.

West : Road.

1	2	3
<i>Taluka:</i> Sanguem	<i>Village:</i> Darbandora	
148/1 Part O:	Government of Goa, Daman & Diu. 1. Shiva Padma Naik. 2. Vilas Padma Naik. 3. Manjula Padma Naik 4. Canem Yamuna Naik. 5. Xanem Yamuna Naik. 6. Calyu Yamuna Naik. 7. Snehal Vinod Sanguekar.	170
148/2 Part O:	Government of Goa, Daman & Diu. <i>Boundaries :</i> North : Road. South : S. No. 148/2, 1. East : S. No. 148/1. West : Village Codli.	1440
		Total: 4630

By order and in the name of the Governor
of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 12th November, 2009.

Notification

No. 22/17/2009-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition bearing Chalta No. 6 of P. T. Sheet No. 56 for setting up of dry recyclable material sorting center and compost stations for the Corporation of the City of Panaji.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector (Rev), Collectorate of North Goa District, Panaji, to perform the functions of a Collector, North Goa District, Panaji under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, North Goa District, Panaji-Goa.
2. The Deputy Collector (Rev), Collectorate of North Goa District, Panaji.
3. The Commissioner, Corporation of the City of Panaji, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector (Rev), Collectorate of North Goa District, Panaji for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Tiswadi

City: Panaji

PT Sheet No./ Chalta No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3

56	6	Shri Peter Marshal Nunes and Shri Anthony Joseph. Nunes.	3555
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Boundaries :

North : Nalla.

South : 11 PTS 56.

East : Village Morombi-
-O-Pequeno.

West : 7 PTS 56.

Total: 3555

By order and in the name of the Governor
of Goa.*D. M. Redkar*, Under Secretary (Revenue-I).

Porvorim, 18th November, 2009.



Department of Transport

Directorate of Transport

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Notification

No. 5/9/90-TPT/2009/2791

In exercise of the powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-03/K 0600 owned by Sr. Christbel's Trust, Mother Teresa's Roses, Parra, Bardez-Goa from

payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor
of Goa.

Arvind D. Loliyekar, Director of Transport &
ex officio Joint Secretary (Tpt.).

Panaji, 18th November, 2009.

Notification

No. 5/9/90-TPT/2009/2793

In exercise of the powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-03/J 6630 owned by Auxilium Convent, Carona, Bardez-Goa, from payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor
of Goa.

Arvind D. Loliyekar, Director of Transport &
ex officio Joint Secretary (Tpt.).

Panaji, 18th November, 2009.

Notification

No. 5/9/90-TPT/2009/2794

In exercise of the powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-07/F 0488 owned by Society of the Daughters of the Heart of Mary, Goa, Nirmala Niwas, Altinho, Panaji-Goa, from payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor
of Goa.

Arvind D. Loliyekar, Director of Transport &
ex officio Joint Secretary (Tpt.).

Panaji, 18th November, 2009.

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